

IN THE COURT OF APPEALS OF TENNESSEE  
AT NASHVILLE  
ASSIGNED ON BRIEFS NOVEMBER 22, 2006

**STATE OF TENNESSEE, DEPARTMENT OF CHILDREN'S SERVICES  
V. M.R.N.**

**IN THE MATTER OF: C.M.I.R. d/o/b 10/25/94 and J.B.I.N. d/o/b 3/18/99,  
children under the age of eighteen years**

**Direct Appeal from the Juvenile Court for Wilson County  
No. 1879 Charles B. Tatum, Judge**

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**No. M2006-01705-COA-R3-PT - Filed on January 17, 2007**

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In this appeal from the termination of a mother's parental rights, the juvenile court initially ordered that state services be provided to the mother and her two sons after the state received a referral regarding one son's excessive absences from school. After fifteen months of services, the court ordered the removal of the children from the home and placement of them in foster care. It later became apparent that the mother's husband had been physically abusive to one of the sons, and that mother had severe mental and emotional problems. State services continued to be provided in order to assist the mother over the next several years, and the husband was ordered not to have any unsupervised contact with the boys when they visited the mother. Three trial home visits with the mother were unsuccessful, and the state filed for termination of the mother's parental rights. After a termination hearing, the trial court ordered that the mother's rights be terminated, finding clear and convincing evidence of persistence of conditions that led to removal and mother's mental incompetence to care for the children, and it found that termination of the mother's parental rights was in the best interests of the children. We affirm.

**Tenn. R. App. P. 3.; Appeal as of Right; Judgment of the Juvenile Court Affirmed**

ALAN E. HIGHERS, J., delivered the opinion of the court, in which W. FRANK CRAWFORD, P.J., and HOLLY M. KIRBY, J., joined.

J. Robert Hamilton, Lebanon, TN, for Appellant

Michael E. Moore, Acting Attorney General & Reporter, Douglas Earl Dimond, Senior Counsel, Nashville, TN, for Appellee

## OPINION

This is an appeal from the termination of a mother's parental rights. By order on June 29, 2006, the Juvenile Court for Wilson County, Tennessee at Lebanon terminated the parental rights of the mother, M.R.N. ("Mother"), to her two sons, C.R., age 11, and J.N., age 7. C.R. and J.N. had different fathers, and Mother was still married to J.N.'s biological father at the time of the termination hearing, although she had filed for divorce. The petition for termination of parental rights was filed by the State of Tennessee, Department of Children's Services ("DCS") after several years of providing services to the family, placement of the boys with multiple foster homes, and several attempts at reunification of the boys with their mother. DCS determined that Mother's mental disabilities prevented her from ever being capable of properly caring for the boys, who both had been diagnosed with Attention Deficit Disorder or Attention Deficit Hyperactivity Disorder ("ADD/ADHD"), and that despite its providing years of intensive services to Mother, she remained unable to remedy the conditions that led to their initial removal from Mother's home. The juvenile court ultimately terminated Mother's parental rights to both children, finding that DCS had established two statutory grounds for termination by clear and convincing evidence and that termination of Mother's rights was in the children's best interests.

This is a difficult case, with a factual history dating back more than five years. In February of 2001, DCS received a referral expressing concerns about C.R.'s excessive number of absences at school. Mother had also written a letter to C.R.'s teacher expressing extreme difficulty in dealing with C.R.'s ADD/ADHD and detailing her own struggles with depression. A caseworker made a visit to Mother's home in Lebanon and noticed that Mother was heating the home by turning on her oven and leaving its door open, even with 2 year-old J.N. in the home. When the caseworker inquired about C.R.'s absences from school, Mother cited her lack of transportation and stated that many times she had woken up late. Mother stated that she had applied for social services, but the caseworker later discovered that Mother had not followed through on her application by providing necessary information. Mother was provided a heater by the Community Help Center and assigned to long term care by DCS.

On March 27, 2001, DCS filed a long term petition alleging dependency and neglect with the Juvenile Court for Wilson County, Tennessee at Lebanon, as to C.R., then age 6, and J.N., then age 2. Meanwhile, Mother received a psychiatric evaluation at the Department for Human Services ("DHS") and began a program for parenting and budgeting skills. The psychiatric evaluation conducted by DHS recommended continued treatment and counseling. Mother expressed a desire to reconcile her marriage with J.N.'s father ("Husband"), who then resided in Shelbyville, if he would agree to attend counseling with her. The DCS petition was heard on May 4, and by order on May 21, Judge C. Barry Tatum found the petition well founded and that the family needed DCS and court intervention. The juvenile court enumerated its requirements for Mother's retaining custody of the children: that both children attend daycare daily, that she participate in marriage counseling to address issues of domestic abuse, that she follow the Child Protective Services ("CPS") plan of action, that she enroll in the Families First Program, that she maintain stable employment and income, that she obtain reliable means for transportation, that she attend various parenting and

money management courses and cooperate with homemaker services, that she submit to a psychological evaluation and follow the recommendations, and that C.R. attend school every day. David Kennedy ("Mr. Kennedy") was appointed guardian ad litem for the children.

Over the next couple of months Mother was often late bringing the children to daycare, and J.N. was often absent or not brought to daycare until the afternoon. In July, the case manager made a home visit at which Mother stated that she and Husband were in counseling together, and that they had plans for him to move back in with the family the next month. During another home visit in August, Mother stated that she was tired of all the pressure because she was doing the best that she could. Homemaker services reported concerns about Mother's depression. In September, C.R.'s guidance counselor called CPS to report C.R.'s excessive tardies at school. In October, the case manager inquired to Mother about J.N.'s absence from subsidized daycare for several weeks and about C.R.'s tardiness. Mother claimed that she had a friend who was supposed to call her and wake her up in the morning, but that the person sometimes forgot. The case manager asked Mother about getting an alarm clock, and Mother responded that she had one but needed to get a battery. (Ex. Vol.4, p. 27). Mother admitted to missing several counseling appointments. Husband had still not moved back in with the family, but Mother said that they were still attempting to reconcile.

At a court review on October 19, 2001, the court ordered continued monitoring by DCS, and ordered Mother to comply with the plan of action. The case manager instructed Mother to come to the office at 9 A.M. three days later to review the updated plan of action, and Mother came to the office at 2:45 P.M. On October 25, C.R.'s principal reported that C.R. had ridden the school bus home, but that no one was present at the child's home and he was brought back to the school. A case manager arrived at the home as Mother was arriving home from visiting Husband in Shelbyville. The case manager and Mother went to the school to discuss the situation with the principal. The case manager stressed the importance of putting C.R. on the bus every morning and being home when he was dropped off, as well as making sure that J.N. was at daycare each day. Mother stated that she often lost track of time and felt like she had no time for herself, and the case manager reminded Mother that she did not work and that she had six hours each day without the boys at home.

Another court review was held on November 15, 2001, and it appeared that C.R. was maintaining regular attendance at school. The supervision level of the home was reduced, because homemaker services continued to work with the family and Husband's return to the household would be providing additional income. However, on December 5, there was another report of C.R.'s bus returning him to school because no one was home. After this incident, Mother came to the DCS office to speak with the case manager. Mother stated again that time management was her biggest problem and expressed how difficult it was for her to deal with C.R.'s ADD/ADHD. Mother indicated a desire to begin home schooling C.R., but the case manager discouraged this notion.

At another home visit on December 14, at which Mother and Husband were present, Mother again expressed frustration with C.R.'s hyperactivity and lack of cooperation with her, and stated that she believed his ADD/ADHD medication wore off too quickly. She also asked the case manager about having the state place C.R. somewhere "short-term." The case manager told Mother that the

state would only pay for placement if C.R. were in legal custody of the state, and that any private placement would have to be paid by Mother through TennCare. The case manager encouraged Mother to have C.R.'s medication reevaluated with his pediatrician. On January 15, 2002, Mother reported that C.R.'s doctor had changed his prescription. On January 16, the case manager spoke to Mother's counselor, who reported some improvement with Mother's depression. After another court review hearing on January 18, Judge Tatum ordered continued monitoring and scheduled another review in April. There was another home visit on February 27, at which Husband and the children were present. Also present were Mother's sister and the sister's three children who had apparently begun residing in the home. Husband's father had recently passed away, and he appeared depressed and expressed weariness. The guardian ad litem, Mr. Kennedy, expressed concern with the unstable living conditions, and he warned Husband that if things did not improve he would recommend removal of the children from the home.

C.R.'s teacher contacted DCS in February and March and described C.R.'s recently developed nervousness and anxiety, as well as incidents where he had been wetting himself. The case worker learned that Mother was not eligible for TennCare because Mother had not followed up with necessary information, and that Mother had therefore not been taking her depression medication. On March 7, Mother reported plans to move to Murfreesboro when her lease was up the following month. On March 21, the case manager attended a meeting at C.R.'s school with his teachers and Mr. Kennedy, where it was reported that C.R. had been suspended from the bus for one day, and Mother had taken him to school but failed to pick him up on time. C.R.'s teacher also expressed concern about whether C.R. was being prescribed the proper dosage of his medication. The case manager recommended to Mother that she have C.R.'s ADD/ADHD medicine reevaluated by a doctor at Cumberland Mental Health ("CMH") rather than her family doctor. Mother's TennCare coverage was reinstated, and she began taking her medicine again. C.R. was examined by a CMH doctor, who changed his prescription again and added another prescription to be taken in the evening to help him sleep.

After a court review on April 12, 2002, Judge Tatum removed the children from Mother's custody and placed them in state custody. The court found that "despite intervention by [Family Support Services] for a 15 month period, there continues to be a pattern of behavioral regression in school by [C.R.]; parents' inability to maintain regular schedules, appointments [and] counseling, resulting in absences [and] tardies for [C.R. and] loss of services for family." A hearing date was set for ratification of the permanency plans.

Over the next several months, the children were placed in multiple foster homes in Lebanon, Dickson, and Nashville. Most of these foster parents reported problems with the boys' behavior. On May 7, 2002, DCS received a referral concerning minor physical abuse of C.R. After a meeting between Mother and Husband and the children at the DHS office on May 10, Husband began yelling at the caseworker and became very hostile, and the police were called into the office.

A caseworker visited C.R. at his school on May 13, and the following is an excerpt of her report:

[Asked] if mom and dad fight and he said he doesn't know. [Asked] if his dad had ever hit him and hurt him and he said yes. [Asked] for him to tell worker he said that his dad threw him across the floor. [Asked] if he could remember when this happened and his said [sic] "a little time ago". [Asked] if mom and dad yell at each other he said he didn't know that they didn't do this in front of him cause they did not want him to be scared. [Asked] if he gets scared when mom and dad yell at each other and he said yes. [Asked] if this was the only time that dad had hurt him and he said that his dad hit him with a big board on the head and he had to go get x-rays and there was blood everywhere. [Asked] him if his mom took him to get the x-rays and he said that his mom had called 911 but she took him to see the doctor. . . [Asked] if his dad had ever hurt his brother [J.N.] and he said that he had never seen his dad hit [J.N.]. [Asked] if his dad had pick [sic] up [J.N.] by the arm and he said he did not remember. [Asked] if there were any other times that his dad had hit him and hurt him and he said that when they lived in Shelbyville that his mother had call [sic] the police on his dad. [Asked] what had happened he said that his dad got very angry and his mother called 911. . . Worker asked him if he was upset the other day when he and his mom and dad came to our office and he said that he was upset because he wanted to go with him [sic] mom but he did not want to leave his brother because he would cry and be afraid. [Asked] if he thought his mother was afraid of his dad and he said a little. [Asked] if he had ever seen his dad hurt his mom and he said one time that his dad threw his mom into a wall and it broke the wall. [Asked] if mom had to go to the doctor and he said no.

The case worker also spoke to C.R.'s teacher and asked if she had any concerns about the child. The teacher reported that C.R.'s behavior had been different since the first of the year, when Husband came back into the home. Mother came by the DHS office on May 17, inquiring about visitation. Mother was informed that until CPS had completed its investigation of alleged abuse by Husband that the visits would have to be supervised. Mother became very loud and confrontational, and the caseworker asked her to leave. The caseworker later let Mother follow her to the gas station so that the caseworker could pay for Mother to put gas into her car to get home.

At a hearing on May 23, 2002, Mother stated to the court that she would unable to work according to the permanency plan because she was six weeks pregnant. The children's foster care mother and guardian ad litem were also present at the hearing and expressed concern with C.R.'s medication. In June, C.R. continued to have problems with wetting, soiling himself, and "night terrors," and his medication dosage was decreased and he was prescribed another drug to help him

sleep. By September, C.R. had become even worse, and he was prescribed medication to help him deal with anxiety. On October 10, the case manager set up a home study with Mother at her apartment in Murfreesboro. The children's foster mother indicated that she wished to have C.R. removed from her home, because of his aggressive behavior.

Mother gave birth to a daughter in January of 2003, of whom Husband was the biological father. By this time, Mother had been attending parenting classes and was taking her medicine for depression, but as of early 2003, Husband had not attended domestic violence classes and he had mentioned giving up his parental rights to the boys. By February of 2003, DCS had decided not to pursue termination of Mother's parental rights, but to allow increased visits to Mother's home with a no contact order on Husband pending his compliance with the permanency plan. The guardian ad litem, caseworker, and Court Appointed Special Advocates ("CASA") representative discussed plans for a transition of the children into Mother's home. Unsupervised visits with Mother were increased to four hours, but Husband was not to be present. These visitations continued as scheduled. After one of the visits in March, the boys' foster mother reported that some comments by J.N. about receiving a gift from Husband made her suspect that Husband had been present at one of the unsupervised visits at Mother's home. Also after this visit, C.R. experienced stomach pains and nausea on the car ride back to the foster home. Apparently Mother had given C.R. some kind of a milkshake "to flush the system" which had a warning on the container not to give to children younger than twelve. The case manager instructed Mother not to give C.R. this milkshake anymore, and also reminded her that if Husband was ever present at an unsupervised visit that the children could not return home.

A supervised visit with Mother and Husband in May went very well, and extended visitation dates with Mother were allowed in anticipation of a discharge hearing on June 20, 2003. However, after the hearing, Judge Tatum entered an order in which he made the following findings:

The Court finds that the children have been exercising extended visitation with Mother. The Court further finds that the children have returned from visitation in a less than clean condition, [J.N.] has had sores on his head, a bruise on his bottom, and has had difficulty in adjusting after a return from visitation. The Court further finds that [C.R.] had lost five pounds and [J.N.] three pounds during the ten day visitation with Mother. There is an open CPS investigation through Rutherford County regarding the bruising and weight loss.

The court ordered that until the investigation was closed, Mother was to have unsupervised visitation with the children for no more than five days at a time. The court also ordered that intensive case management services be placed in Mother's home to monitor the situation, and set September 19, 2003, as the date for a review hearing.

At the hearing in September, DCS reported that Mother had complied with all required tasks and had regularly exercised her visits with the children. Therefore the court granted a 30-day trial

home pass with Mother, after which a 90-day trial home pass would begin. The court specifically told Mother that Husband was not allowed unsupervised visits until the 30-day trial home pass was complete, and the case managers reemphasized this with her after the hearing. The court also told Mother that if DCS had to remove the children from her home for any problem, DCS would be ordered to file a petition to terminate her parental rights.

After a weekend visit with Mother, C.R. had returned to the foster home with bruises which, after a CPS investigation, were attributed to being hit with a wooden spoon by Husband. The court entered an order on October 1, revoking the trial home pass and instructing DCS to proceed with the termination of parental rights as to Mother. DCS filed a petition to terminate parental rights on October 16, 2003. Mother filed a motion for physical custody of the children in which she denied that C.R. had been struck with a wooden spoon during his last visit. The court held a hearing on November 7, 2003, and denied Mother's motion for custody. In its order entered on December 5, the court stated that at the October 19 hearing, it had made clear that Husband was not to have any unsupervised contact with the children. Despite this order, the court found that Mother had initiated contact with Husband immediately after the hearing, and it found that Husband was present in the home the weekend that C.R. was injured. The court ordered that all future visits be supervised by DCS, and the children were once again placed in foster care.

On March 2, 2004, Husband voluntarily surrendered his parental rights to J.N., his biological son.<sup>1</sup> On April 2, 2004, the juvenile court ratified another permanency plan after a review hearing at which it was decided that Mother would be allowed a final opportunity for a ninety-day trial home pass with the children, to begin on April 30. Mother's counsel withdrew at this time, and the court allowed the substitution of a new attorney. On May 6, the court approved entry of an agreed order that continued the termination of parental rights hearing until September 17, 2004. The court also granted DCS's motion to place the children in legal custody of Mother effective July 29, 2004. At a review hearing on June 4, the court was made aware that Mother had not given C.R. his prescription medication that morning, because she claimed that he was calmer when he was not medicated. The court entered an order extending the trial home pass indefinitely, and ordered that the children and Mother take all medication as prescribed and that in-home services continue. A review hearing was set for September 3, 2004.

Over the following summer months, DCS continued to monitor the home and became increasingly aware of Mother's difficulty in dealing with the children's behavior. On August 25, 2004, case manager Kelly Putnam ("Ms. Putnam"), who had been working with the family for several months, and another service provider, Amber Dillehay ("Ms. Dillehay"), conducted a home visit after Mother had reported an incident with the boys that had occurred the previous weekend. Mother had been inside the house while the boys were at a nearby playground. Mother reported that C.R. had picked up a piece of glass at the playground and chased J.N. into the house. When C.R. refused to put down the piece of glass and called Mother vulgar names, Mother stated that she called the police, who were eventually able to control the situation. Ms. Putnam and Ms. Dillehay, as well

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<sup>1</sup> C.R.'s biological father likewise surrendered his parental rights to C.R. on July 18, 2005.

as other service providers, reported several other incidents during the trial home pass in which Mother was unable to deal with her children's behavior.

At the review hearing on September 3, 2004, Judge Tatum revoked the trial home pass and ordered that the children be placed back into custody of DCS. The court also ordered that DCS proceed with termination of Mother's parental rights. The children were placed with foster parents, "Mr. and Mrs. E.," and DCS developed a permanency plan, which the court ratified at a hearing on April 25, 2005.<sup>2</sup> DCS filed an amended petition to terminate parental rights on July 19, 2005, alleging three grounds: failure of Mother to comply with the permanency plan's statements of responsibilities, removal of the children from the home for six months and Mother's failure to remedy the conditions which led to removal, and mental incompetence of Mother to provide for further care and supervision of the children. Mother filed an answer on August 3, 2005.

A trial took place before Judge Tatum in the Wilson County Juvenile Court on August 6, August 20, and September 8, 2005. The following witnesses testified on behalf of DCS: Dr. Trey Monroe ("Dr. Monroe"), a psychologist who had met and evaluated Mother at DCS's request on three separate occasions;<sup>3</sup> Ms. Putnam, Mother's DCS case manager; Mrs. E., the foster mother in custody of the two boys; Ms. Candy Arnold, who had worked with Mother and the children during the 2005 supervised visits as a counselor; and Ms. Dillehay, who had worked with the family as a family preservation counselor since June of 2004. Mother called two of her sisters to the witness stand, as well as her brother-in-law, and two pastors from churches that Mother attended. Finally, Mother took the stand.<sup>4</sup>

Another permanency plan hearing was held on May 15, 2006. By the summer of 2006, the children had been living with the same foster parents since September of 2004 and continued to exhibit progress in their behavior. On June 29, 2006, Judge Tatum ratified the permanency plan for the children submitted by DCS, stating in the order that the children were doing great in their foster home, that the foster parents had voiced their desire to adopt the boys, that DCS's plan and goal of

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<sup>2</sup> Mother was not present at the hearing, and she later informed Ms. Putnam that she had received no notice of the hearing. Ms. Putnam testified, however, that she had sent Mother notice by mail and called Mother to notify her of the April 25 permanency plan hearing.

<sup>3</sup> In February of 2003, Dr. Monroe conducted psychological evaluations and parenting evaluations on Mother, at the request of DCS. Mother revealed to Dr. Monroe at this time that she was currently on prescription medication to treat her depression. Dr. Monroe determined that Mother had mental health issues that prevented her from properly parenting the children, specifically adjustment disorder with anxiety and depressed mood, and dependant personality disorder. Dr. Monroe conducted a re-evaluation of that original assessment in October of 2004. Dr. Monroe provided deposition testimony regarding these assessments in November of 2004. Dr. Monroe met once more with Mother in July of 2005, to determine if she had made progress or if any changes had occurred that would affect her ability to parent. Dr. Monroe testified that he had noticed some progress with Mother's own depression, but that he had the same concerns regarding her ability to care for the children as they entered their teenage years.

<sup>4</sup> At the end of the trial, Judge Tatum informed the parties that he would not be issuing a decision on that day, but only after he had reviewed the exhibits and testimony. He told the parties that he would "have something for [them] by October 1[.]" but the record does not contain the court's resolution at that time.



adoption was appropriate and in the children's best interests, and concluded that the need for foster care continued. The court also entered an order terminating Mother's parental rights on June 29, 2006, in which it set out its findings of fact and conclusions of law. The court found that DCS had established two statutory grounds for termination by clear and convincing evidence: removal of the children from the home for six months and persistence of conditions that led to their removal, and Mother's mental incompetence that prevented her from being able to provide for the further care and supervision of the children. The court further found that termination of rights was in the children's best interests. Mother filed a timely notice of appeal on July 28, 2006.

## II. ISSUES PRESENTED

On appeal, Mother presents, as we perceive them, the following issues for our review:

1. Whether there was clear and convincing evidence to support the finding of persistence of conditions, and whether there was clear and convincing evidence to support the finding that Mother was mentally incompetent.
2. Whether DCS failed to exercise reasonable efforts in providing Mother with appropriate psychiatric counseling, or in providing Mother with explicit information, education, or training regarding dealing with children with ADD/ADHD.
3. Whether the evidence clearly and convincingly supported the finding that termination of Mother's parental rights was in the best interests of the children.

We find that clear and convincing evidence supports the statutory grounds for termination, that DCS exercised all reasonable efforts in providing services to Mother, and that clear and convincing evidence supports the finding that termination of parental rights was in the best interests of the children. Accordingly, we affirm.

## III. STANDARD OF REVIEW

A biological parent's right to care and custody of his or her child is among the oldest of the judicially recognized liberty interests protected by the Due Process Clauses of the federal and state constitutions. *In re S.M.*, 149 S.W.3d 632, 638 (Tenn. Ct. App. 2004) (citing *Troxel v. Granville*, 530 U.S. 57, 65, 120 S. Ct. 2054, 2060, 147 L. Ed. 2d 49 (2000); *Hawk v. Hawk*, 855 S.W.2d 573, 578-79 (Tenn. 1993); *Ray v. Ray*, 83 S.W.3d 726, 731 (Tenn. Ct. App. 2001)). While this right is fundamental and superior to the claims of other persons and the government, it is not absolute. *Id.* at 638. It continues without interruption only as long as a parent has not relinquished it, abandoned it, or engaged in conduct requiring its limitation or termination. *Id.* at 638-39 (citing *Blair v. Badenhope*, 77 S.W.3d 137, 141 (Tenn. 2002); *Stokes v. Arnold*, 27 S.W.3d 516, 520 (Tenn. Ct. App. 2000); *O'Daniel v. Messier*, 905 S.W.2d 182, 186 (Tenn. Ct. App. 1995)).

In Tennessee, termination proceedings are governed by statute. *In re M.J.B.*, 140 S.W.3d 643, 653 (Tenn. Ct. App. 2004). Parties who have standing to seek the termination of a biological parent's parental rights must prove two things. *Id.* First, they must prove the existence of at least

one of the statutory grounds for termination. Tenn. Code Ann. § 36-1-113(c)(1) (2003); *In re D.L.B.*, 118 S.W.3d 360, 367 (Tenn. 2003); *Jones v. Garrett*, 92 S.W.3d 835, 838 (Tenn. 2002); *In re M.J.B.*, 140 S.W.3d at 653. Second, they must prove that terminating the parent's parental rights is in the child's best interests. Tenn. Code Ann. § 36-1-113(c)(2) (2003); *In re M.J.B.*, 140 S.W.3d at 653; *In re A.W.*, 114 S.W.3d 541, 545 (Tenn. Ct. App. 2003); *In re C.W.W.*, 37 S.W.3d 467, 475-76 (Tenn. Ct. App. 2000); *In re M.W.A., Jr.*, 980 S.W.2d 620, 622 (Tenn. Ct. App. 1998).

Because the decision to terminate parental rights has profound consequences, courts must apply a higher standard of proof in deciding termination cases. *In re I.C.G.*, No. E2006-00746-COA-R3-PT, 2006 Tenn. App. LEXIS 707, at \*10 (Tenn. Ct. App. Oct. 31, 2006). To terminate parental rights, a trial court must determine by clear and convincing evidence not only the existence of at least one of the statutory grounds for termination but also that termination is in the child's best interest. Tenn. Code Ann. § 36-1-113(c)(1),(2) (2003); *In re Valentine*, 79 S.W.3d 539, 546 (Tenn. 2002). Clear and convincing evidence is evidence in which there is no serious or substantial doubt about the correctness of the conclusions drawn from the evidence. *In re Valentine*, 79 S.W.3d at 546 (citing *Hodges v. S.C. Toof & Co.*, 833 S.W.2d 896, 901 n.3 (Tenn. 1992)).

Appeals in termination of parental rights cases are appealed directly to this Court and are governed by the Tennessee Rules of Appellate Procedure. *In re M.J.B.*, 140 S.W.3d 643 (Tenn. Ct. App. 2004) (citing Tenn. Code Ann. §§ 36-1-113(g), -122(b)(1), -124(b) (2001)). For a non-jury trial, our review of the trial court's findings of fact is *de novo* upon the record of the trial court, with a presumption of correctness unless the preponderance of the evidence is otherwise. Tenn. R. App. P. 13(d) (2006). In cases where clear and convincing evidence is required, we then determine whether the facts, either as found by the trial court or as supported by the preponderance of the evidence, clearly and convincingly establish the grounds for terminating the biological parent's parental rights. *In re I.C.G.*, 2006 Tenn. App. LEXIS 707, at \*12 (citing *In re S.M.*, 149 S.W.3d 632, 640 (Tenn. Ct. App. 2004)). We review the trial court's conclusions of law *de novo* with no presumption of correctness. *Campbell v. Fla. Steel Corp.*, 919 S.W.2d 26, 35 (Tenn. 1996); *Presley v. Bennett*, 860 S.W.2d 857, 859 (Tenn. 1993).

#### IV. DISCUSSION

##### A. Evidence Supporting Statutory Grounds for Termination

Appellant argues that the trial court erred in finding that each of the two statutory grounds for the termination of her parental rights were satisfied by clear and convincing evidence. The trial court found that DCS had established, by clear and convincing evidence, two of its three<sup>5</sup> asserted

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<sup>5</sup> The statutory ground DCS unsuccessfully sought to establish was based upon Tenn. Code Ann. § 36-1-113(g)(2), substantial noncompliance by Mother with the permanency plan, but the trial court found: "DCS has not proven by clear and convincing evidence that the Mother has not attempted to achieve the goals and tasks required of her in the multiple permanency plans of care. The Mother has made her best effort."

statutory grounds for termination, specifically Tenn. Code Ann. §§ 36-1-113(g)(3)(A)(i)-(iii) and 36-1-113(g)(8)(B)(i), which provide respectively:

(3)(A) The child has been removed from the home of the parent or guardian by order of a court for a period of six (6) months and:

(i) The conditions which led to the child's removal or other conditions which in all reasonable probability would cause the child to be subjected to further abuse or neglect and which, therefore, prevent the child's safe return to the care of the parent(s) or guardian(s), still persist;

(ii) There is little likelihood that these conditions will be remedied at an early date so that the child can be safely returned to the parent(s) or guardian(s) in the near future; and

(iii) The continuation of the parent or guardian and child relationship greatly diminishes the child's chances of early integration into a safe, stable and permanent home.

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[(8)(B)(i)] The parent or guardian is incompetent to adequately provide for the further care and supervision of the child because the parent's or guardian's mental condition is presently so impaired and is so likely to remain so that it is unlikely that the parent or guardian will be able to assume or resume the care of and responsibility for the child in the near future . . . .

Tenn. Code Ann. §§ 36-1-113(g)(A)(i)-(iii), (g)(8)(B)(i) (2003).

Regarding persistence of conditions, we believe that the evidence presented at trial clearly and convincingly supports the trial court's determination that this statutory ground was met. DCS presented testimony at trial from several service providers, who each provided extensive accounts of Mother's inability to implement their recommendations, consistently discipline the children for improper behavior, or to keep herself or the boys on a schedule. Ms. Putnam and Ms. Dillehay testified regarding incidents where, for example, C.R. would kick the case manager in front of Mother and she would not make any efforts to correct his behavior. Another incident involved C.R. locking himself in the bathroom when Ms. Putnam arrived. Ms. Putnam testified that J.N. had a difficult time listening and would throw things. Service providers testified that Mother frequently expressed frustration to them in dealing with the boys' behavior. Furthermore, two of the trial home visits with Mother were revoked after incidents involving either neglect of the boys or Mother's inability to control their behavior.

The record shows that one trial home visit was revoked in October of 2003 after the trial court found that both boys had indicated that Husband was in Mother's home during a weekend visit and hit C.R. with a wooden spoon, despite the court's order that Husband not be allowed any unsupervised visits with the children. DCS reports also indicate that Husband once became hostile

with DCS workers at an office visit. Despite these occurrences, as well as other emotional and physical abuse which Mother acknowledged at trial, she still maintains at least monthly contact with Husband, who is the father of her daughter.

With respect to Mother's mental incompetence, we also find that the evidence clearly and convincingly supports the trial court's finding that DCS established this ground for termination. Dr. Monroe, a clinical psychologist, met with Appellant at the request of DCS on three separate occasions to assess her mental capacity and ability to parent her children. His undisputed testimony supports the trial court's finding that Mother suffered from adjustment disorder with anxiety and depressed mood, as well as dependent personality disorder. Dr. Monroe testified that her dependent tendencies caused her to be more prone to engage in and endure abusive relationships. Furthermore, he testified that Mother was often unable to focus and multi-task in her daily life, and that her tendencies to avoid conflict or confrontation kept her from consistently disciplining her children or establishing appropriate boundaries.

Appellant's testimony, particularly regarding the relationship with her abusive husband, supports the trial court's conclusion that, despite her filing for divorce prior to trial, Mother was still not willing or able to sever her ties with Husband. This corresponds with Dr. Monroe's diagnosis of dependant personality disorder. Mother testified that prior to DCS involvement in this case, she had moved away from Husband in Shelbyville to live in Lebanon. When asked about the circumstances of this relocation, Mother testified as follows:

- A. I had decided to move. My friend lived in Lebanon and she was the only one that was available to help me move, and so I searched up here, we found a house, and that's when I moved here.
- Q. [By Mr. Kennedy] Why didn't [Husband] move with you?
- A. Because I was leaving him because of – I would say more emotional abuse than anything else.
- Q. How about physical abuse?
- A. No.
- Q. None?
- A. He – he's pushed me around a couple of times and it's mostly been verbal and emotional abuse.
- Q. Has he pushed [C.R.] around some?
- A. A couple – well, just once actually. There was one incident when we first were together where he was going to correct [C.R.] with a switch, but I went in between him and [C.R.] and he did not, because I was not going to allow that.

At one point, Mother actually testified that prior to their marriage, Husband had impregnated her against her will with a previous child, born in between C.R. and J.N., whom she had put up for adoption:

- Q. I guess my question . . . is you had [C.R.], you became pregnant again with this daughter, you gave her up for adoption, and you have another child, or two more children. Why did you give that daughter up for adoption?
- A. I had two more children that – that was after I got married, and I wasn't married when I got pregnant with her, and I didn't want a relationship with [Husband] at that time, and he wouldn't accept no for an answer.
- Q. What do you mean he wouldn't accept no for an answer?
- A. Well, at that time he was not on his medication rightly and he wasn't in his right mind.
- Q. He was abusive?
- A. He wasn't abusive, but he just – well, I mean, he did force me, you know – I mean, he didn't hurt me, but he forced me.
- Q. Forced you to have sex?
- A. Yeah.
- Q. So he raped you?
- A. Well, yeah.

Despite these revelations, Mother further testified that she believed Husband could still have a good relationship with her sons and that he wanted to do so.

Mother also testified that she struggled with depression. Mother's testimony regarding her difficulty with the children's behavior and difficulty in applying parenting techniques recommended by DCS also supports Dr. Monroe's diagnosis. She admitted that she often had difficulty retaining information provided to her from DCS, and in her accounts of dealing with her children, she was frequently unwilling to acknowledge any responsibility for her continuing parental shortcomings, often instead placing the blame on the children or their medication. DCS reports in the record often describe interactions with Mother in which she expressed to service providers extreme frustration and despair in dealing with the children's behavior, particularly that of C.R.

### ***B. Reasonable Efforts by DCS***

Appellant challenges the sufficiency of two aspects of DCS's considerable endeavors to provide services to prevent the children's removal from Mother's home or facilitate a successful reunification with her two young sons. Mother argues that DCS should have provided her with appropriate psychiatric counseling to aid her in overcoming her depression, anxiety, and dependent personality disorder as they affected her ability to adequately care for the children. Mother also asserts that DCS failed to provide her with explicit information on how to deal with children with ADD/ADHD. We believe the evidence clearly and convincingly supports the trial court's finding that DCS exercised reasonable efforts to assist Appellant over this four-year period.

Prior to ordering a child committed to or retained within the custody of DCS, a court must first determine whether reasonable efforts have been made to prevent the need for removal of the child from such child's family or made it possible for the child to return home. Tenn. Code Ann. § 37-1-166(a)(1),(2) (2003). In a termination proceeding, the issue of reasonable efforts is best addressed within the framework of Tenn. Code Ann. § 36-1-113(i)(2). *State v. R.R.'s*, No. E2006-02785-COA-R3-PT, 2006 Tenn. App. LEXIS 751, at \*12 (Tenn. Ct. App. Nov. 29, 2006) (citing *In re A.W.*, 114 S.W.3d 541, 545 (Tenn. Ct. App. 2003)); *State Dep't of Children's Servs. v. Malone*, No. 03A01-9706-JV-00224, 1998 Tenn. App. LEXIS 83, 1998 WL 46461, at \*1 (Tenn. Ct. App. Feb. 5, 1998)). Within this framework, whether DCS utilized reasonable efforts is one of many factors the court must consider in the best interests analysis. *Id.* at \*13 (citing Tenn. Code Ann. § 36-1-113(i)). The statute requires "reasonable efforts," not "Herculean" efforts. *Id.* (citing *Malone*, 1998 Tenn. App. LEXIS 83, at \*2); *see also In re C.M.M.*, 2004 Tenn. App. LEXIS 160, at \*25 (Tenn. Ct. App. March 9, 2004). DCS may delay termination proceedings if it decides it has not had sufficient opportunity to make "reasonable efforts" to provide the services needed to enable the child to return home safely. Tenn. Code Ann. § 36-1-113(h)(2)(C) (2003).

This Court has held that "the Department's obligation to make reasonable efforts to preserve, repair, or restore a parent-child relationship is not implicated in every termination proceeding." *In re C.M.M.*, 2004 Tenn. App. LEXIS 160, at \*28. "Termination proceedings based on the grounds in Tenn. Code Ann. § 36-1-113(g)(4)–(8) usually will not require the Department to demonstrate that it has made reasonable efforts to reunite a child with his or her parents." *Id.* at \*28, n. 26. We note that one of the grounds upon which the trial court relied to terminate Mother's rights in this case, specifically that Mother is mentally incompetent to care for the children, falls within this class of proceedings. *See* Tenn. Code Ann. § 36-1-113(g)(8)(B)(i) (2003).

At the time of the initial removal of the children from Mother's home in April of 2002, the court found that, despite fifteen months of DCS providing services to the family, C.R.'s behavior at school had regressed, Mother continued to be unable to keep important appointments for the children and counseling appointments, and that the children had been repeatedly absent or tardy from school or daycare. Over the course of the following months and years the record of this case clearly evinces Mother's inability to control her children's behavior, apply learned parenting techniques, or consistently keep appointments.

At trial, several witnesses testified regarding the many services provided to Mother throughout DCS's involvement with the family. These witnesses further testified as to Mother's inability to apply parenting techniques to her own interactions with C.R. and J.N. in their daily lives. Ms. Putnam, who worked diligently with Mother and the boys throughout 2004 and 2005, testified that she could not think of any other services that DCS could have given Mother over the fifty-one month period of DCS involvement with the family, and that Mother had exhausted all services.

As we have stated, DCS is not required to establish reasonable efforts in cases involving the statutory ground of mental incompetence of the parent. *See In re C.M.M.*, 2004 Tenn. App. LEXIS 160, at \*28. Nonetheless, Appellant argues that the two grounds for which her parental rights were

terminated, persistence of conditions and mental incompetence, exist co-dependently, and that DCS did not therefore satisfy the reasonable efforts standard required by Tenn. Code Ann. § 36-1-113(g)(3), i.e. persistence of conditions, by providing Mother with psychiatric treatment. Appellant cites several cases in which the Court of Appeals has found that DCS's failure to provide psychological or psychiatric treatment constitutes a failure to exercise reasonable efforts to assist Mother in reunification. *See, e.g., State v. Howard*, No. W2006-00585-COA-R3-PT, 2006 WL 2257341 (Tenn. Ct. App. Aug. 8, 2006); *State v. S.V.*, No. E2006-00686-COA-R3-PT, 2006 WL 1864470 (Tenn. Ct. App. July 6, 2006); *In re J.L.E.*, No. M2004-02133-COA-R3-PT, 2005 WL 1541862 (Tenn. Ct. App. June 20, 2005); *In re M.E.*, No. M2003-00859-COA-R3-PT, 2004 WL 1838179 (Tenn. Ct. App. Aug. 16, 2004).

While we recognize that this might be a convincing argument on other facts, it is unavailing in the present case. In the cases cited, this Court found a lack of reasonable efforts only after it determined that DCS had failed to provide needed counseling that had been recommended since its initial involvement with the case, *see In re M.E.*, 2004 WL 1838179, at \*7-12, that DCS had prematurely filed a termination petition, *see In re J.L.E.*, 2005 WL 1541862, at \*10-15, that the Department had not provided the mother's counselors with her psychological reports, *see State v. S.V.*, 2006 WL 1864470, at \*4-7, or that the record lacked any indication of DCS's attempts to aid a father overcome his personality disorder, *see State v. Howard*, 2006 WL 2257341, at \*6. These justifications are simply not applicable in the present case.

Mother testified that she has received medication from a psychiatrist in Murfreesboro since the boys' removal from her home in 2002. As DCS was apparently aware of this treatment, it should not reasonably have been required to provide additional therapy, particularly in light of the consistent difficulties Mother had keeping her and the boys' other various appointments. The record indicates that Mother briefly stopped taking her medication in 2002 after she had let her TennCare coverage expire, and she only provided the necessary documents to reinstate the coverage after receiving assistance from the Department. While DCS may not have specifically provided psychiatric treatment for Mother, the Department did provide numerous counseling services to Mother over the four years of its involvement with this family. Ms. Putnam testified that she gave any assessments of Mother to service providers so that they would be aware of her concerns and needs.

"Typically, termination proceedings based on the grounds in Tenn. Code Ann. § 36-1-113(g)(1)-(3) generally require the Department to demonstrate that it has made reasonable efforts to reunite a child with his or her parents." *In re C.M.M.*, 2004 Tenn. App. LEXIS 160, at \*28, n. 27. DCS was therefore required to establish its reasonable efforts with regard to the statutory grounds of persistence of conditions, and we believe that DCS clearly satisfied this burden at trial through the testimony offered by service providers who had worked with Appellant over a fifty-one month period.

While DCS did not specifically provide Mother with training for parenting children with ADD/ADHD, she was offered and partook in many programs involving parenting techniques, as well as intensive in-home services specifically aimed at dealing with the children's behavior. Once, the

boys missed a medication evaluation appointment, and Ms. Putnam had rescheduled, because Mother did not bring the boys to meet Ms. Putnam so that she could transport them to the appointment. Ms. Putnam testified that she had consistently counseled Mother regarding the children's medications and the need to have them administered appropriately. Ms. Putnam also testified that Mother had missed counseling appointments and dental appointments for the children. Ms. Putnam often called Mother repeatedly on her cell phone to notify her of appointments, but Mother frequently did not answer and would sometimes call back a day or two later. Despite the efforts of DCS, the record shows that the service providers involved with this case agreed that Mother failed to follow through with their recommendations, and that the boys' behavior continued to regress as a result. Furthermore, while Mother's inability to parent is a persistent condition which she has sadly been unable to correct, an equally relevant condition is that of the seemingly enduring relationship with her abusive husband.

### *C. Evidence Supporting Best Interests of the Children*

Finally, Mother argues that the evidence from the trial below did not clearly and convincingly establish that termination of her parental rights was in the best interests of her children. We disagree.

Termination of parental or guardianship rights must be based a finding of the court by clear and convincing evidence that the grounds for termination rights have been established, and that termination is in the best interests of the child. Tenn. Code Ann. § 36-1-113(c)(1)-(2) (2003). Factors to be considered in determining whether termination of parental rights is in the best interest of the child are found in Tennessee Code Annotated section 36-1-113(i) (2003). *In re F.R.R.*, 193 S.W.3d 528, 531 (Tenn. 2006). These factors are:

- (1) Whether the parent or guardian has made such an adjustment of circumstance, conduct, or conditions as to make it safe and in the child's best interest to be in the home of the parent or guardian;
- (2) Whether the parent or guardian has failed to effect a lasting adjustment after reasonable efforts by available social services agencies for such duration of time that lasting adjustment does not reasonably appear possible;
- (3) Whether the parent or guardian has maintained regular visitation or other contact with the child;
- (4) Whether a meaningful relationship has otherwise been established between the parent or guardian and the child;
- (5) The effect a change in caretakers and physical environment is likely to have on the child's emotional, psychological, and medical condition;
- (6) Whether the parent or guardian, or other person residing with the parent or guardian, has shown brutality, physical, sexual, emotional or psychological abuse, or neglect toward the child, or another child or adult in the family or household;



- (7) Whether the physical environment of the parent's or guardian's home is healthy and safe, whether there is criminal activity in the home, or whether there is such use of alcohol or controlled substances as may render the parent or guardian consistently unable to care for the child in a safe and stable manner;
- (8) Whether the parent's or guardian's mental and/or emotional status would be detrimental to the child or prevent the parent or guardian from effectively providing safe and stable care and supervision for the child; or
- (9) Whether the parent or guardian has paid child support consistent with the child support guidelines promulgated by the department pursuant to § 36-5-101.

Tenn. Code Ann. § 36-1-113(i)(1)-(9) (2003). These factors are not exhaustive, and the statute does not require every factor to appear before a court can find that termination is in a child's best interest. *In re I.C.G.*, 2006 Tenn. App. LEXIS 707, at \*15 (citing *Dept. of Children's Servs. v. T.S.W.*, No. M2001-01735-COA-R3-PT, 2002 WL 970434, at \*3 (Tenn. Ct. App. M.S., filed May 10, 2002)).

In this case, the trial court provided detailed findings regarding its best interest analysis in the final order terminating Appellant's rights, which were as follows:

DCS has further established that the best interest of [C.R.] and [J.N.] would be served by termination of Mother's parental rights. Although the Mother has maintained regular contact with the boys throughout this lengthy process, the boys' behaviors are negatively impacted by the Mother's lack of focus, her inability to manage multiple children's behaviors and her inability to provide necessary guidance and instruction or correction when appropriate. Furthermore, the Mother's stated opinion of [Husband] poses a genuine risk that he will re-enter this family's circle and would undoubtedly have a negative effect on [C.R.]'s and [J.N.]'s development.

The most telling aspect is the result of the boys' behavior from the start of the last trial home visit and their behaviors at the time of this hearing. In spite of frequent assistance by Ms. Amber Dillehay twice per week, the Mother's home was chaotic. The boys' behaviors were uncontrollable and unmanageable by the Mother. Concerns about physical violence and inappropriate touching<sup>6</sup> and

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<sup>6</sup> This refers to an incident about which Ms. Dillehay testified at trial. While conducting a home visit with Mother and the children, she witnessed J.N. touch Mother's infant daughter inappropriately while Mother was changing her diaper. Ms. Dillehay advised Mother that this was inappropriate, yet Mother said nothing to the child to correct his behavior.

supervision were not addressed by the Mother without prompting. The Mother's own actions in calling the police reveal her lack of control over very small children. The Mother lacks the ability or willingness to assert parental control and has to resort to calling law enforcement. This is the result after years of assistance and three months of intensive in-home services.

The real proof of Mother's negative influence on these boys is the dramatic improvement in their behaviors once they were placed in a home with consistent rules, structure and consequences. Their behaviors in the home have improved. Their behaviors in school have improved. Their levels of medication have been reduced. Their grades and attitudes about school have improved. Their behaviors are proof positive that their environment is a direct cause of their issues.

This court shares the CASA advocate's concern that termination of the Mother's parental rights is a seemingly drastic outcome. The Mother cannot help who she is or how she views the world. This court cannot change the Mother's parenting skills, only the Mother can do that. She has been provided with multiple services, and even Dr. Monroe stated that he never evaluated a single person so much. The Mother is only partially aware of her shortcomings and her very mental condition of affirmatively taking action to improve her skills as a parent.

[J.N.] and [C.R.] deserve the right to do as well as possible with the talents and abilities they have been given. While they love their Mother and enjoy seeing her, they now must be reminded to even call her. They have little if any bond with their younger sister [. . .] They are in a stable placement and for once are finding success socially and academically. Mother's condition is not likely to improve in the near future. Continued interaction with the Mother will foster confusion and conflict. Their very behaviors regress and become briefly unmanageable when they visit.

[J.N.] and [C.R.]'s future with their Mother will likely get more uncertain. Dr. Monroe's opinion is that the Mother does "her best with infants and latency age children. But when children get to be between 10 and 12 and start to be pre-teenagers and engaging in more acting out and limit stressing behaviors, that plays against her [Mother's] ability to assert herself and step up as a parent with good, quick consequences when she sticks to a appropriate conflict and discipline . . . And once they hit teenage years, things will get quite difficult for her". This is not the life these boys deserve . . . .

We share the trial court's concerns regarding Mother's capacity to properly care for the children, despite four years of services by DCS, and Mother's belief that Husband intends to retain an influence on the boys' lives.

We also agree with the trial court's recognition of the boys' significant behavioral improvements since they began living with Mr. and Ms. E, who are Omnivision foster parents. The record clearly supports the trial court's findings that the boys' behavior drastically improved over the course of their residence with Mr. and Ms. E. Ms. E testified that she and her husband participated in classroom training to be declared a "therapeutic foster parent." Ms. E testified that when C.R. and J.N. first entered their home in September of 2004, she had been notified of the children's behavioral issues. She testified that at first, the children did not respond to discipline at all. The boys often fought with each other and acted out in various ways. She claimed that J.N.'s behavioral problems "were kind of masked because [C.R.]'s behavior was so bad[.]" C.R. had serious issues with bedwetting and soiling himself. At the time, C.R. was taking multiple medications for not only his ADD/ADHD, but also his anxiety issues.

Ms. E testified that she and her husband had, after repeated consultations with doctors, eventually gotten C.R. "weaned" off of the anxiety medication, which she claimed was making him "just down right mean" and had changed his ADD/ADHD medication. J.N. remained on the ADD/ADHD medication. By the summer of 2005, Ms. E testified that both boys' behaviors at home and at school improved remarkably, after months of patience and consistent discipline. The boys rarely fought, their grades and behavior in school had improved, and C.R.'s specific behavioral issues had also improved. Ms. Putnam was the foster family's DCS case manager, and her testimony further corroborated these improvements.

#### **IV. CONCLUSION**

For the aforementioned reasons, we affirm the judgment of the juvenile court. Costs are assessed against Appellant, M.R.N., for which execution may issue if necessary.

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ALAN E. HIGHERS, JUDGE